National Energy Board | Office national de l'énergie

Reasons for Decision

Enbridge Pipelines Inc.

MH-3-2008

May 2009

Detailed Route Hearing

Canada

National Energy Board

Reasons for Decision

In the Matter of

Enbridge Pipelines Inc.

Detailed Route Hearing Pursuant to Section 35 of the *National Energy Board Act* – Enbridge Pipelines Inc. Alberta Clipper Expansion Project – Certificate OC-54

MH-3-2008

May 2009

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Abbreviations

NEB Act or Act	National Energy Board Act
Clipper Project or Clipper	Alberta Clipper Expansion Project
Board or NEB	National Energy Board
CEA Act	Canadian Environmental Assessment Act
Certificate or CPCN	Certificate of Public Convenience and Necessity
City or Regina	City of Regina
Denton Lands	Tract No. 2690.1 (SW 35-16-20 W2M) and Tract Nos. 2691.1 and 2692.1 (SE 35-16-20 W2M)
Enbridge	Enbridge Pipelines Inc.
Existing Development Plan	Sherwood-Regina Planning District Developmental Plan
Existing Zoning Bylaw	Sherwood-Regina Planning District Zoning Bylaw
km	kilometre(s)
KP	kilometre post
LSD	legal subdivision
Mainline	Enbridge Mainline System
PPBoR	Plans, Profile and Book of Reference
Proposed Community Plan	Draft Sherwood – Regina Planning District Official Community Plan
Regina Development Plan	City of Regina Development Plan
RM	Rural Municipality
RoW	right-of-way
SaskPower	Saskatchewan Power Corporation
South Regina Reroute	77.4 km deviation of Clipper from the Enbridge Mainline to the south of Regina, Saskatchewan
TransGas	TransGas Limited

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder;

IN THE MATTER OF the submission by Enbridge Pipelines Inc. dated 16 May 2008 pursuant to section 33 of the Act of the Plans, Profile and Book of Reference respecting the detailed route of the Alberta Clipper Expansion Project, consisting of a pipeline and associated facilities extending from Hardisty, Alberta to a point on the Canada/United States border near Gretna, Manitoba approved by Certificate OC-54;

IN THE MATTER OF written statements of opposition concerning portions of the proposed detailed route of the Alberta Clipper Expansion Project;

AND IN THE MATTER OF National Energy Board Hearing Order MH-3-2008 dated 28 November 2008;

HEARD in Regina, Saskatchewan on 24, 25, and 26 February 2009;

BEFORE:

K.M. Bateman	Presiding Member
R.R. George	Member
D.M. Hamilton	Member

Appearances	**On behalf of**	**Witnesses**
Company		
L. Olthafer J. H. Strain M. Yohemas	Enbridge Pipelines Inc.	K. Underhill L. Aniskowicz B. Lawrence J. Paetz K. Gilmore T. Cheesman
Landowners		
D.J. Carlson	on his own behalf	D.J. Carlson B. Campbell
J.D. Goudy T.A. Leier, Q.C. R.B. Morris, Q.C.	L.F. Denton, F.M. Denton, J.W. Denton L.A. Denton	L.F. Denton J.W. Denton A. Ramsay T. Williams T. Shepherd
R.D. Skinner	D.D. Peterson	D.D. Peterson R. Peterson
National Energy Board		
L.C. Bell J.L. Jenkins	National Energy Board	

Chapter 1

Background

1.1 Regulatory Process for the Clipper Project

On 30 May 2007, Enbridge Pipelines Inc. (Enbridge) applied to the National Energy Board (NEB or Board) for a Certificate of Public Convenience and Necessity (Certificate or CPCN) under section 52 of the *National Energy Board Act* (NEB Act or Act) authorizing Enbridge to construct and operate the Alberta Clipper Expansion Project (Clipper Project or Clipper). The Board convened an oral public hearing to hear evidence and submissions on the Application. The hearing was held on 5, 6 and 26 November 2007 in Calgary, Alberta and on 19 and 20 November 2007 in Regina, Saskatchewan.

The Clipper Project was also subjected to a screening level of environmental assessment under the *Canadian Environmental Assessment Act* (CEA Act). The Board's Environmental Screening Report released 22 February 2008 concluded that, with the implementation of Enbridge's environmental protection procedures and mitigation measures, and the NEB's recommendations, the Clipper Project is not likely to cause significant adverse environmental effects.

On 22 February 2008, the Board also issued the OH-4-2007 Reasons for Decision approving the Clipper Project on the grounds that the facilities are, and will be, required by the present and future public convenience and necessity. The Board recommended to the Governor in Council that a CPCN be issued subject to certain conditions. Certificate OC-54 in respect of the Clipper Project was approved by the Governor in Council on 8 May 2008.

1.2 Description of the Clipper Project

The Clipper Project consists of 1 078 kilometres (km) of new 914 millimetre (36 inch) outside diameter oil pipeline and associated facilities between Enbridge's Hardisty, Alberta terminal and the Canada/United States border near Gretna, Manitoba. The associated facilities include new pump units at eight existing Enbridge pump stations, one new pump station near Regina, Saskatchewan and receipt tankage, booster pump units and other terminalling facilities at the Hardisty terminal. The targeted in-service date for the Clipper Project is 1 July 2010.

1.3 Determination of the Detailed Routing of the Clipper Pipeline

Approximately 89% of the Clipper pipeline is routed alongside and contiguous to the existing Enbridge Mainline system (Mainline). This reflects Enbridge's primary routing criterion of paralleling the Mainline right-of-way (RoW) in order to minimize the environmental and socio-economic impacts of the pipeline by minimizing both the overall length of the pipeline and the length of new RoW, which in turn minimizes the total area disturbed by the pipeline. Enbridge stated that, in developing this routing strategy for Clipper, it considered that: the Mainline route has been in-service for approximately 55 years; adequate workspace is generally

available along the route; and, environmental, socio-economic and land use constraints are generally not encountered along the route that cannot be effectively mitigated or compensated. Enbridge further submitted that the effects associated with widening an existing pipeline corridor would be incremental, while a new route would affect additional lands and increase the amount of land disturbance. Finally, Enbridge stated that pipeline surveillance and maintenance activities can be conducted more efficiently for pipelines located within a common RoW than for two RoWs that are geographically separated.

Enbridge determined that there were four sections of the pipeline where the existing Mainline route was not satisfactory due to land use issues and areas of limited work space. In developing and evaluating route alternatives for those areas, Enbridge stated that it considered the following guiding principles and factors.

- Enbridge modified the route to accommodate, where practical, input from landowners, the public and regulatory agencies.
- Enbridge minimized: pipeline length; the amount of sidehill and steep or unstable terrain; and, crossings of native prairie, high-quality woodlots, wetlands, lakes and sloughs.
- Enbridge avoided, where practical: environmentally sensitive areas, special land use areas, farm buildings, well sites, aquifer recharge areas and shelterbelts.
- Enbridge crossed roads and rail lines at or near right angles and crossed windbreaks and shelterbelts at right angles, to the extent possible, while minimizing the width of the RoW width minimized to that necessary for the trench line and vehicle traffic.
- Enbridge paralleled existing pipelines and used existing RoW or other linear developments.

The most substantive of the deviations from the Enbridge Mainline is the 77.4 km deviation to the south of Regina, Saskatchewan (South Regina Reroute). Enbridge initially intended to route the Clipper pipeline north of Regina in order to connect to its existing Regina terminal. Following a more detailed review, however, Enbridge determined that it was not necessary to locate the new pump station near Enbridge's existing pump station north of Regina in order to facilitate a potential future interconnection. Enbridge therefore proposed the South Regina Reroute, which it considered would minimize impacts to the public by avoiding existing and potential future land use conflicts along the proposed northern route and by addressing concerns raised by some landowners regarding the proximity of the north route to homes and acreages. Enbridge also considered that the South Regina Reroute minimizes the length of new RoW, aligns with the best alternative location for the required new Rowatt pump station, is contiguous with an established utility corridor and avoids native prairie vegetation, water bodies, difficult terrain and other environmentally sensitive areas.

Enbridge submitted that the same considerations used in the general route selection process were used on a more localized, site specific scale in assessing potential detailed route refinements.

In the OH-4-2007 Reasons for Decision recommending approval of the Clipper Project, the Board found constructing the majority of the pipeline route alongside and contiguous to the Enbridge Mainline or other RoW to be reasonable since the environmental and socio-economic

impacts of the Project would be minimized and the risk of construction delays reduced. With respect to the proposed route deviations from the Enbridge Mainline, the Board noted that the rationale for the deviations was to reduce the potential for land use conflicts and therefore found the criteria and the proposed deviations from the Mainline to be appropriate. Certificate OC-54 approving the Clipper Project was issued on 15 May 2008.

1.4 Detailed Route Process

Once a CPCN has been issued, the Act provides for a process to determine the detailed location of the pipeline.

The approval process prescribed by the Act for considering the detailed route is designed to involve all affected landowners. This process begins when the company files its Plans, Profiles and Book of Reference (PPBoR) detailing the precise location of the proposed pipeline including the lands to be crossed, the types and amounts of land rights required and the affected landowners and tenants.

Once the PPBoR has been filed, subsection 34(1) of the Act requires the company to serve a notice on all owners of lands proposed to be acquired and to publish a notice in at least one issue of a local newspaper. These notices describe the proposed detailed route of the pipeline and the procedure to be followed should affected landowners wish to object to the detailed route. Owners of lands proposed to be acquired have 30 days after being served with the notice to file a written statement of opposition with the Board explaining their interest in the proposed detailed route and their reasons for opposing it. Persons that may be adversely affected by the proposed route, other than those whose lands are proposed to be acquired, have 30 days after the last publication of the notice to file a written statement of opposition with the Board setting out the nature of their interest and the grounds for opposing the proposed detailed route.

If no written statements of opposition to the detailed route are received within the 30-day periods, the Board may approve the PPBoR without a public hearing. However, if written statements of opposition are received within the 30-day periods, the Board must hold a public hearing in the area of the lands which are the subject of the statement of opposition, unless the opposition is withdrawn or the Board finds the statement to be frivolous, vexatious or not made in good faith. The Board notifies landowners that submitted statements of opposition and requires the company to publish a notice in at least one local newspaper of the time and place set for the public detailed route hearing.

At the detailed route hearing, parties have the opportunity to address the best possible detailed route of the pipeline and the most appropriate methods and timing of constructing the pipeline. Issues already addressed in the context of the certificate hearing, such as the need for the pipeline, are not reconsidered during the course of the detailed route hearing. Further, it is not within the Board's authority to consider matters of compensation or to participate in the negotiation or arbitration processes related to compensation available through the Federal Minister of Natural Resources.

The Board takes into account all written statements of opposition filed with it and all representations made to it at a public hearing in order to determine:

- the best possible detailed route of the pipeline; and
- the most appropriate methods and timing of constructing the pipeline.

A copy of the Board's decision is required to be sent to the Federal Minister of Natural Resources and to each person who made representations at the hearing.

1.5 Clipper Detailed Route Hearings

On 16 May 2008, Enbridge filed with the Board the PPBoR for the proposed detailed route of the pipeline. Pursuant to the Act, Enbridge served notices on owners of lands proposed to be acquired for the proposed route and published notices in newspapers in the vicinity of the proposed route.

The Board received 28 Letters of Opposition to the proposed Clipper detailed route. Of these objections, 16 were subsequently withdrawn and five were found not to meet the requirements of subsections 34(3) and (4) of the Act. The remaining seven objections were set down for hearing by Hearing Order MH-3-2008 issued on 28 November 2008. At the request of the landowners, the statements of opposition with respect to the Denton lands relied on the same evidence and were heard together. Accordingly, the Board heard the objections in three separate hearing files, as follows:

1. Douglas James Carlson opposition relating to Tract 2394.08 (SE 13-27-7 W.3M).

2. Lyle Francis Denton, Florence Marion Denton, Westward Enterprises Inc. oppositions relating to Tract 2690.1 (SW 35-16-20 W.2M) and John Wesley Denton and Louis Alvin Denton oppositions to Tracts 2691.1 and 2692.1 (SE 35-16-20 W.2M).

3. Dalerie Dawn Peterson opposition relating to Tract 2686.1 (LSD 1, 33-16-20 W.2M).

Prior to the commencement of the oral hearing, preliminary matters were raised by parties as follows.

On 5 January 2009, Douglas Carlson wrote to the Board requesting an extension of the schedule for the MH-3-2008 hearing. By letters dated 12, 15 and 19 January 2009, Lyle, Florence and John Denton supported that request, asking to postpone the deadline for the submission of landowner evidence and the commencement of the hearing. Enbridge opposed the requests by letter dated 14 January 2009 on the basis of the prejudice that would ensue to Enbridge. In letters dated 16 and 20 January 2009, the Board denied the requests stating that the prejudice to the landowners of a February hearing was outweighed by the prejudice to Enbridge of a delay.

The Dentons requested leave to file late evidence on 18 February 2009. Enbridge objected to this late filing in letters dated 19 and 20 February 2009 and reply comments were received from the Dentons on 19 and 20 February 2009. The Petersons also requested leave to file late evidence on 20 February 2009. The Board denied both requests for leave by letters dated

23 February 2009, stating that the filing of evidence so close to the commencement of the hearing would result in undue prejudice to Enbridge.

The detailed route hearings were held in Regina, Saskatchewan from 24 February 2009 to 26 February 2009. In accordance with the Dentons' request, which was granted by the Board during the oral portion of the hearing, written argument was received from the Dentons on 4 March 2009 and written reply argument from Enbridge was received on 6 March 2009.

Having taken into account the statements of opposition received and the representations made at the detailed route hearings, the Board has reached the decisions outlined in the following chapters with respect to the proposed detailed route and construction methods and timing of the Clipper pipeline.

On 6 May 2009, the Peterson opposition to the route was withdrawn. The Board has not, therefore, issued any decision with respect to that hearing file.

Chapter 2

Mr. Douglas Carlson

2.1 Background

Mr. Carlson is the registered owner of Tract No. 2394.08 (SE 13-27-07 W3M) proposed to be crossed by the Clipper pipeline (refer to Figure 2-1). Mr. Carlson's property is located in the Rural Municipality (RM) of Loreburn No. 254 in Saskatchewan. Mr. Carlson runs an agribusiness operation and maintains a residence with his wife, Ms. Campbell, on this land. Mr. Carlson filed a Letter of Opposition to the proposed Clipper route, which was set down for hearing by the Board on 23 October 2008.

The oral hearing for Mr. Carlson was held on 24 February, 2009 in Regina, Saskatchewan.

2.2 Enbridge's Proposed Route

The proposed detailed route crosses the northeast corner of Mr. Carlson's property between kilometre post (KP) 516 and 517. Approximately 10 metres of pipeline and a corresponding permanent easement area of 0.06 hectares (0.08 acres) would be situated on Mr. Carlson's property. Mr. Carlson's residence is located approximately 45.4 metres from the proposed centerline of the pipeline and 32.1 metres from the south edge of the RoW.

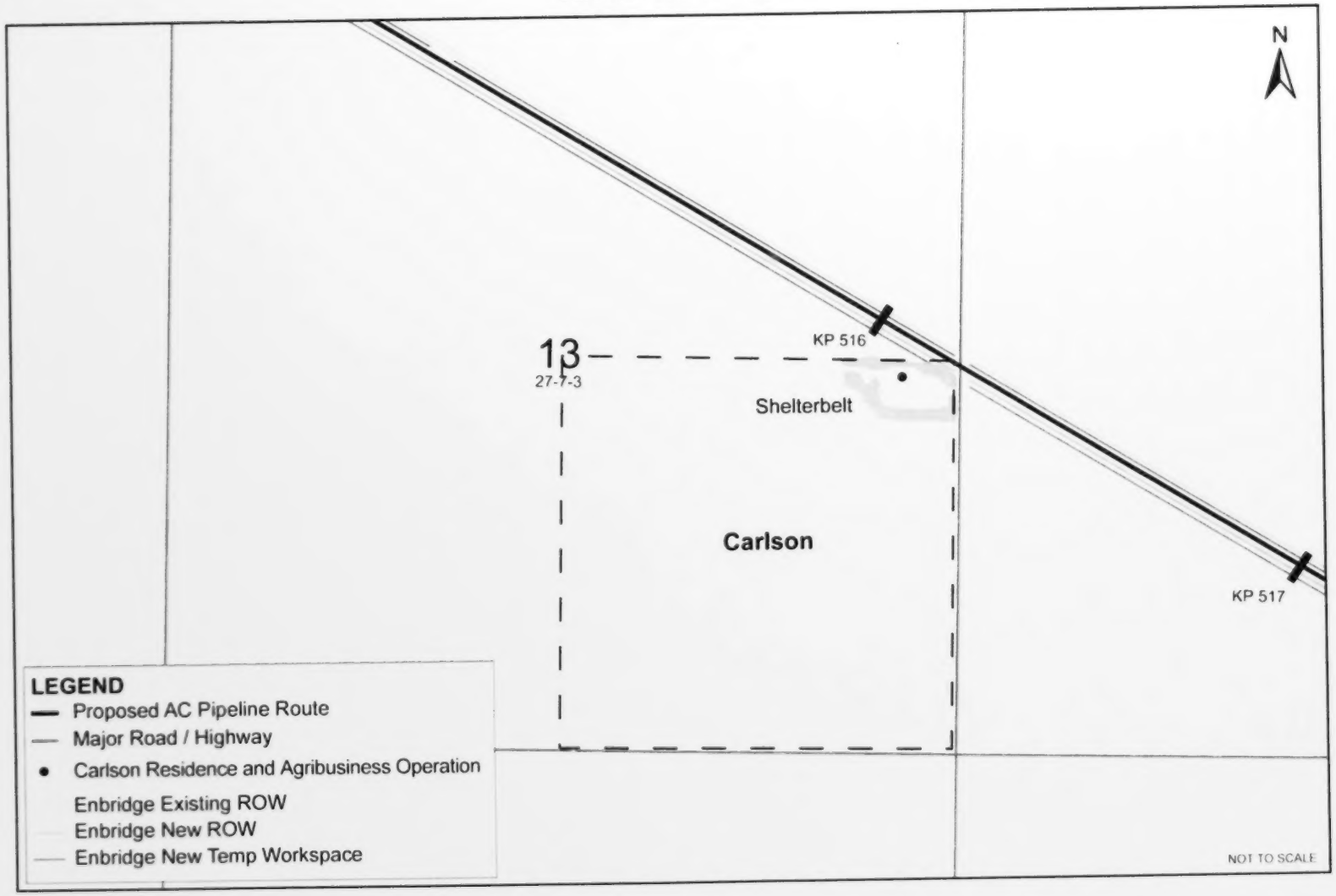
Views of Parties on Enbridge's Proposed Route

Enbridge

Enbridge submitted that the proposed detailed route through Mr. Carlson's property was consistent with its primary routing criterion of paralleling the existing Enbridge Mainline RoW in order to minimize the total area disturbed by the pipeline. Enbridge committed to further minimize the impact on Mr. Carlson's property by using a bore construction technique to install the pipeline under the Carlson property. Enbridge submitted that this technique would eliminate the need for any ground disturbance on Mr. Carlson's property, as well as the requirement for any temporary work areas, and would ensure that the farmstead shelterbelt that would otherwise be impacted is preserved. Enbridge indicated that it did not expect there to be any impacts on the shelterbelt as the alignment of the bore would be 10 feet from the centre line of the tree closest to the bore in a dense shelterbelt.

Given the distance from the proposed pipeline to Mr. Carlson's residence, Enbridge stated that it did not believe that the safety and security of the residence would be compromised. Enbridge further noted that Mr. Carlson's agribusiness operation is presumably already precluded in the area of the proposed pipeline by the existence of the farmstead shelterbelt.

Figure 2-1
The Carlson Land



At the hearing, Enbridge stated its understanding that a resolution of the matter had been reached with the Carlsons. In the event that an agreement could not be finalized, Enbridge stated that it would consent to having the terms of the agreement set out as conditions of approval of the detailed route by the Board. The terms of that agreement include decreasing the RoW width to 10 metres, and using a bore methodology to construct the pipeline across the Carlson property. Additional protection would be provided for the Carlson property by the implementation of dust control methods, erection of fencing to ensure no shelterbelt trees are removed during construction and by mitigating the loss of any shelterbelt trees due to the boring method through compensation or replacement. Further, Enbridge would not construct any additional pipelines across the Carlson property within the Clipper easement without further consent.

Mr. Carlson

In his Letter of Opposition, Mr. Carlson stated that the location of the proposed route and the associated safety zone would impede the operation, security and safety of his agribusiness operation and residence. Mr. Carlson also cited concerns with the noise, dust, inconvenience and invasion of privacy created by pipeline construction and maintenance and noted that the location of the proposed route could affect the shelterbelt that provides privacy for his family.

Mr. Carlson and Ms. Campbell further indicated that they had concerns regarding the limitations that the location of the proposed route could place on their future development and expansion opportunities, such as a future addition to their residence and piping water in from the road. Mr. Carlson and Ms. Campbell understood that these developments could be undertaken; however they would have to seek permission from Enbridge prior to starting any construction.

At the hearing, Mr. Carlson and Ms. Campbell confirmed that they were close to reaching an agreement with Enbridge, the terms of which are outlined above. Mr. Carlson further confirmed that all outstanding concerns would be addressed by the terms of that agreement.

2.3 Mr. Carlson's Proposed Alternate Routes

Mr. Carlson noted in his Letter of Opposition that alternate routes on non-occupied agricultural land to both the north and south of his agribusiness operation and residence are available. No specific alternate routes were identified by Mr. Carlson or Ms. Campbell.

Views of the Board

The Board has not received a withdrawal of Mr. Carlson's opposition to the detailed route. The Board therefore assumes that the parties have been unable to finalize agreements reflecting the understanding set out at the hearing. The Board notes Enbridge's commitment to adjust its construction practices adjacent to the Carlson property so as to minimize any construction impacts. The Board further notes that Mr. Carlson indicated that these measures address his concerns. The Board is therefore satisfied with the methods and timing of construction proposed by Enbridge and finds that the detailed route proposed by Enbridge is the best possible route.

Decision for Mr. Carlson

The Board finds that the detailed route proposed by Enbridge is the best possible route.

The approval of the detailed route will be subject to the commitments made by Enbridge as follows:

1. **Enbridge shall construct the Clipper pipeline using the bore method of construction.**

2. **Enbridge shall reduce the RoW width for the Clipper pipeline to 10 metres.**

3. **Enbridge shall utilize dust-control methods, such as the application of calcium to the neighbouring road;**

4. **Enbridge shall put in place additional protections, such as fencing, to ensure that no trees are removed from the shelterbelt during construction;**

5. **Enbridge shall provide compensation for or replace any shelterbelt trees impacted by the construction of the pipeline.**

6. **Enbridge shall not construct additional pipelines on the Carlson property within the Clipper easement without further consent.**

Chapter 3

Mr. Lyle and Mrs. Florence Denton, Messrs. John and Louis Denton and Westward Enterprises Incorporated

3.1 Background

Lyle and Florence Denton are joint owners of Tract No. 2690.1 (SW 35-16-20 W2M) and John and Louis Denton are joint owners of Tract Nos. 2691.1 and 2692.1 (SE 35-16-20 W2M) (collectively, the Denton Lands) proposed to be crossed by the Clipper pipeline. The Denton Lands are adjacent properties located south of Regina, Saskatchewan in the Rural Municipality (RM) of Sherwood and are zoned agricultural. Currently the lands are used for farming and the Dentons are pursuing plans for a residential development on the lands (refer to Figures 3-1 and 3-2).

All four landowners filed Letters of Opposition to the proposed detailed route as individuals and a Letter of Opposition was also filed by Westward Enterprises Incorporated, a company for which Lyle Denton acts as President and which has a registered interest in Tract No. 2690.1. Each of these Letters of Opposition were set down for hearing by Board letters dated 23 October and 27 November 2008.

Susanne, Cole and Carl Denton, Lyle Denton's wife and children, also filed Letters of Opposition to the Clipper detailed route. Since they do not have a legal interest in the Denton Lands, their letters of objection were not set down for hearing. However, recognizing their interest in the affected lands, the Board invited them to intervene in the detailed route hearing. No applications to intervene were received.

At the request of the landowners, the statements of opposition with respect to the Denton Lands were heard together and relied on the same evidence. The oral hearing for the Dentons was held from 24 February to 26 February 2009 in Regina, Saskatchewan. In accordance with the Dentons' request which was granted by the Board, written argument was received from the Dentons on 4 March 2009 and written reply argument from Enbridge was received on 6 March 2009.

3.2 Development in the RM of Sherwood

The current Sherwood-Regina Planning District Developmental Plan (Existing Development Plan) restricts residential development on agricultural lands to that which is related to farming operations. Development and subdivision of agricultural land for country residential purposes unrelated to farming operations is prohibited under the Existing Development Plan.

Figure 3-1
The Denton's Lands and Alternate Routes

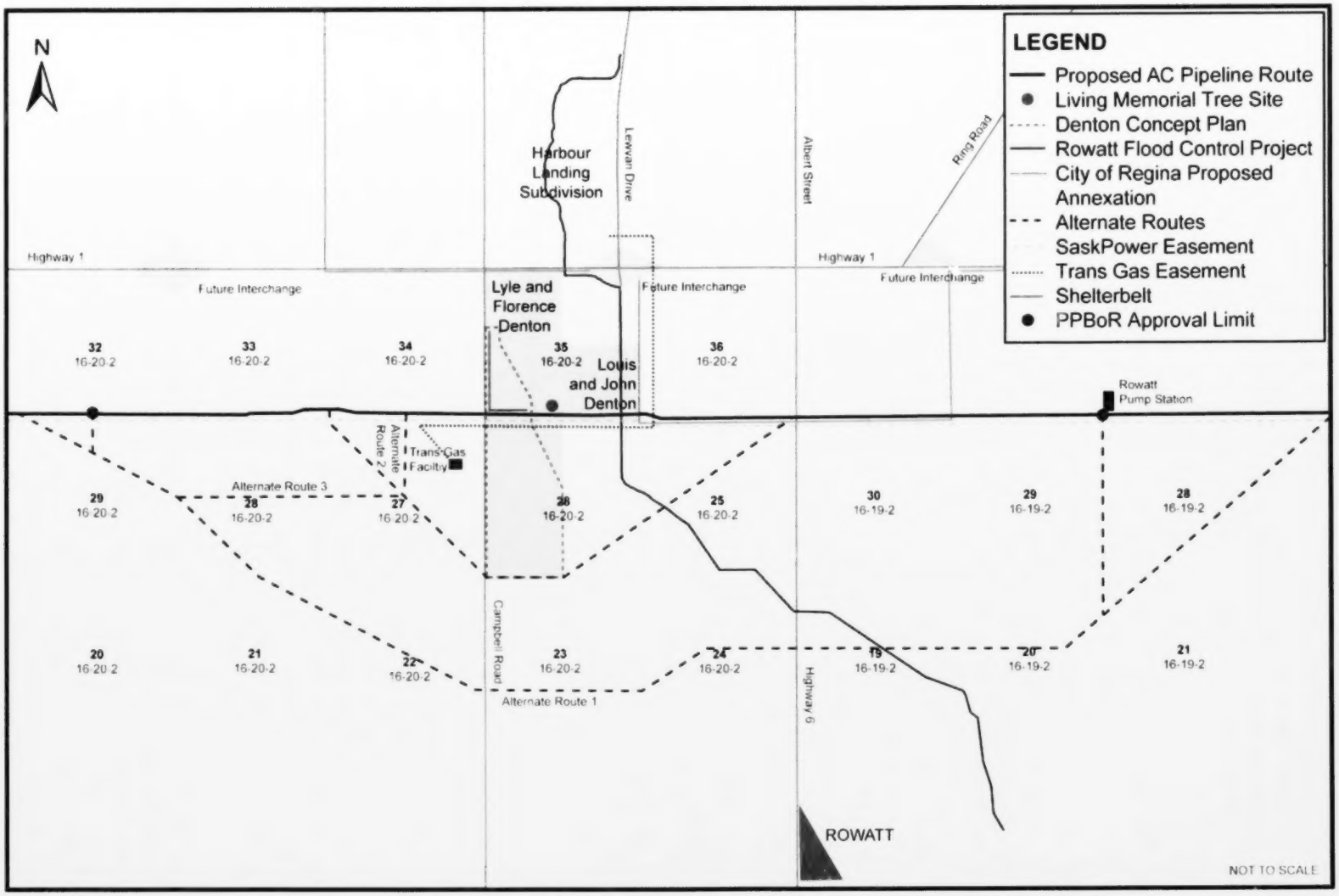


Figure 3-2
Lyle and Florence Denton's Development Plan

The current Sherwood-Regina Planning District Zoning Bylaw (Existing Zoning Bylaw) permits one house on land zoned agricultural, provided the house is located on a site at least 160 acres in size and is accessory to farming operations undertaken on that same tract of land. Under the discretionary use section of the Existing Zoning Bylaw, one additional house accessory to farming operations may be allowed if it is occupied either by joint owners of the site or full-time workers on the site that participate in the farming operations. The Existing Zoning Bylaw stipulates a setback for residential developments from oil/gas/hydrocarbon transmission pipelines of 305 metres.

The RM of Sherwood and the City of Regina have been working on the development of a new community plan and zoning bylaw. The draft Sherwood – Regina Planning District Official Community Plan (Proposed Community Plan) and the Sherwood – Regina Planning District Zoning Bylaw (Proposed Zoning Bylaw) are currently out for public discussion. The Proposed Community Plan allows for limited development of country residential housing on agricultural lands in certain areas. Other locations for country residential development may also be allowed at Council's discretion. The Proposed Community Plan requires a setback of 150 metres for residential developments from major oil/gas/hazardous material transmission pipelines and electrical power lines.

3.3 Enbridge's Proposed Route

The proposed detailed route through the Denton Lands is part of the South Regina Reroute, as described in Chapter 1. The proposed route between KP 704-R and 706-R is immediately north of and adjacent to an existing Saskatchewan Power Corporation (SaskPower) high voltage transmission line easement which transects the Denton Lands approaching the south boundary. Immediately south of the SaskPower easement on Tract Nos. 2690.1 and 2692.1, there is also an existing TransGas Limited (TransGas) RoW.

Views of the Parties on Enbridge's Proposed Route

Enbridge

As discussed in Chapter 1, Enbridge considered a number of routing factors in developing the South Regina Reroute. These factors include paralleling existing pipelines and using existing RoW or other linear developments as well as minimizing pipeline length in order to minimize potential disturbance and cost. Enbridge stated that the South Regina Reroute in the area of the objections is contiguous with an established utility corridor containing SaskPower transmission lines and TransGas pipelines and is the shortest route. Enbridge further stated that the proposed route avoids existing and potential future land use conflicts as it situates the pipeline outside of the expected short, medium and long term growth requirements for the City of Regina.

Enbridge submitted that the Denton's development plans are highly speculative in view of the projected growth of the City of Regina, the restrictions on country residential development in the RM of Sherwood under both the Existing Development Plan and the Proposed Community Plan and the other existing constraints on the Denton Lands.

In respect to the City's growth plans, Enbridge cited the City of Regina Development Plan (Regina Development Plan), a municipal bylaw which acts as the City's official policy guide for the use and development of land. Enbridge noted that the Regina Development Plan's objectives for future development are focused on increasing the density of the existing city rather than expansion. Enbridge submitted that the City does not forecast annexing the Denton Lands even under its longest range forecast of an over 300,000 population. The Regina Development Plan estimates population growth of 1,000 to 1,200 persons per year, increasing to 1,300 persons per year by 2016, the end of the forecast period. Based on a population growth of 1,300 persons per year from 2008 on the most recent Census population for Regina of 179,246, Enbridge estimated that the population of Regina would not reach 300,000 until the year 2100.

With respect to the RM of Sherwood, Enbridge noted that the Denton Lands are zoned agricultural and that the Existing Development Plan prohibits development of agricultural land for country residential purposes. The permitted uses for the lands under the Existing Zoning Bylaw include provision for only one house related to farming operations. One additional house related to those operations may also be allowed as a discretionary use. These restrictions do not, in Enbridge's submission, support the type of development contemplated by the Dentons.

Enbridge acknowledged that the RM of Sherwood may become more willing to approve the development of new dwellings on agricultural lands under the Proposed Community Plan if it is implemented. Enbridge noted, however, that the Proposed Community Plan limits country residential development to certain areas which do not include the Denton lands.

Enbridge submitted that the development potential of the Denton Lands is already constrained by the existing SaskPower and TransGas easements. Enbridge disputed the Denton's assertion that these easements could be relocated to accommodate their development plans, noting the difficulty in siting transmission lines and the significant costs involved. Finally, Enbridge submitted that the Regina Development Plan denotes the Denton Lands as being within an area of servicing constraints.

Based on the foregoing, Enbridge argued that the prospect of development of the Denton lands is exceedingly remote. However, if development were to become possible, Enbridge submitted that the existence of the pipeline would not be an impediment. Enbridge stated that developments can accommodate pipeline RoWs, as evidenced by the residential development Harbour Landing to the north of the affected lands.

As it had not been granted access to the Denton Lands, Enbridge submitted that it lacks information regarding the location of the Denton Living Tree Memorial Site relative to the proposed pipeline but that it did not anticipate any impacts. Enbridge stated that it is amenable to working with the Dentons to mitigate any potential impacts on that site.

In response to the Dentons' concerns with respect to RoW width, Enbridge submitted that the proposed 26 metre width is necessary to safely build and maintain the pipeline adjacent to the powerline. However, Enbridge indicated that it would be willing to explore whether the amount of new RoW could be reduced by overlapping with a portion of the existing SaskPower easement. Enbridge stated that this would require the consent of SaskPower and that access to the Denton Lands would be required to determine the specific configuration and position of the

power lines. Enbridge further stated that any future utility or pipeline routing along its proposed route would be subject to separate regulatory processes.

Enbridge responded to the Dentons' concerns with respect to Enbridge's public consultation process by noting that the Board had found the process to be adequate for southern Regina landowners in the course of the facilities hearing.

Finally, Enbridge submitted that any compensation issues were outside of the Board's jurisdiction.

The Dentons

The Dentons raised a number of issues with Enbridge's proposed route, their primary concern being the proximity of the proposed route to the City of Regina which they submit will create land use conflicts as the City grows, and will negatively impact their own development plans for the land (See Figure 3-2).

With respect to the City of Regina's growth plans, the Dentons suggested that the projected population growth in the Regina Development Plan may be understated in light of the recent economic boom. While acknowledging that land use conflicts may not arise in the near future, the Dentons urged the Board to take a long term approach given the expected life of the pipeline and to plan for the growth of the City.

Although their urban fringe lands are currently zoned agricultural, the Dentons stated that similar land was approved for development of the Harbour Landing residential subdivision. The Dentons submitted that the Proposed Community Plan and Zoning Bylaw are more amenable to country residential development than the Existing Community Plan and Zoning Bylaw. The Dentons noted that such development may be allowed in areas not identified for country residential development at the discretion of City Council.

The Dentons stated that their lands have strong development potential due to their proximity to Regina and the availability of services as well as the planned highway interchange construction and flood control project. The Dentons stated that the existence of the Clipper pipeline would be a significant obstacle to these development plans. In addition to the loss of land and crossing costs, they submitted that the pipeline corridor could lead potential developers and municipal planners to select other lands for development.

With respect to the existing easements, the Dentons submitted that the SaskPower and TransGas easements are not permanent and can be moved at the cost to the developer. The Dentons submitted that inquiries were made in this regard with SaskPower and that they were advised that a relocation of the electrical transmission lines would cost upwards of two million dollars.

The Dentons acknowledged that the existing SaskPower and TransGas easements could be integrated into the development plan if necessary. The Dentons submitted, however, that the incorporation of the existing pipeline easement in the Harbour Landing development resulted in a fenced-in, coarse grass area that cannot be used as an amenity and is not accepted by the City of Regina as part of the required municipal greenspace reserve for the development. The

Dentons argued that the residential development setback requirements under discussion with the RM of Sherwood are subject to change and may not ever apply to the existing facilities.

Based on their observations of the number of pipelines placed in Enbridge's current mainline RoW, the Dentons stated that it is to be expected that additional pipelines would be placed in any new RoW taken for the Clipper Project, further impeding their development plans. The Dentons submitted that Enbridge's plans to take a wider than average easement may also be reflective of this intention.

The Dentons expressed concerns that the proposed route of the Clipper pipeline may affect their family's Living Tree Memorial Site as well as an immature shelter belt.

The Dentons indicated that they would be willing to consider engaging in discussions with Enbridge and allowing Enbridge access to their lands for the purpose of determining whether the width of the RoW could be reduced or whether any impacts to their Living Tree Memorial Site could be mitigated.

Finally, the Dentons questioned the adequacy of Enbridge's consultation with landowners south of Regina and submitted that Enbridge's compensation offers for the value of the land to be taken for RoW are not competitive and do not consider future value.

3.4 The Dentons' Proposed Alternate Routes

The Dentons proposed three alternate routes further south of the City of Regina to avoid future land use conflicts. These alternate routes are depicted on Figure 3-1.

Alternate 1

This route departs from Enbridge's proposed route at the northwest corner of section 29-16-20-W2 and follows an existing Alliance/Cochin RoW. It runs southeast to the centre of the eastern edge of section 29-16-20-W2, then crosses the southwest quarter of section 28-16-20-W2 to just east of the northwest corner of section 21-16-20-W2. From there it crosses the northeast quarter of section 21-16-20-W2 and then across the northwest and southeast quarters of section 22-16-20-W2 to the eastern end of its southern boundary, at Campbell Road. Next, it parallels the Petroleum Transmission Pipeline, running due east along the section 22-16-20-W2 boundary, the section 23-16-20-W2 boundary and into section 24-16-20-W2. Then it turns northeast to the centre of section 24-16-20-W2, where it turns due east again and continues on through section 19-16-19-W2 to the middle of the northern boundary on the southeast quarter of section 20-16-19-W2 before paralleling a rail line in a northeast direction across the northwest quarter of section 21-16-19-W2, section 28-16-19-W2 and the northwest quarter of section 27-16-19-W2 to rejoin the proposed route in the middle of the south boundary of section 34-16-19. Variations to the start and end points of this alternate were also proposed to account for PPBoR approvals.

Alternate 2

Alternate 2 runs south from the middle of the south boundary of section 34-16-20-W2 to the middle of section 27-16-20-W2, where it turns southeast to the corner of section 27-16-20-W2.

The route then runs due east along the southern edge of the southwest quarter of section 26-16-20-W2, northeast through the southeast quarter of section 26-16-20-W2 and the southwest, northwest and northeast quarters of section 25-16-20-W2 to the southeast corner of 36-16-20-W2, where it rejoins the proposed route. A variation of Alternate 2, starting in the southwest corner of section 34-16-20-W2 and running southeast across the northwest quarter of section 27-16-20-W2 before joining the route, was also proposed.

Alternate 3

This route starts at the northwest corner of section 29-16-20-W2 and follows the same path as Alternate 1 up to the centre of the eastern edge of section 29-16-20-W2. The route then runs due east just north of the centre line of section 28-16-20-W2 through the northwest quarter of section 27-16-20-W2, then turns southeast to the corner of section 27-16-20-W2. The route then runs due east along the southern edge of the southwest quarter of section 26-16-20-W2, northeast through the southeast quarter of section 26-16-20-W2 and the southwest, northwest and northeast quarters of section 25-16-20-W2 to the southeast corner of 36-16-20-W2, where it rejoins the proposed route. A variation to the starting point of this alternate was also proposed to account for PPBoR approvals.

Views of Parties on the Dentons' Proposed Alternate Routes

Enbridge

Based on its view that the future development proposed by the Dentons is highly speculative and that land use conflicts have been avoided by situating the pipeline outside of the City of Regina's projected growth areas, Enbridge submitted that its proposed detailed route is the best possible route. Enbridge conducted a comparative analysis of the alternate routes and found that they would: significantly increase capital costs; increase the incremental length of the pipeline; require additional new RoW, much of it non-contiguous for Alternates 2 and 3; affect additional landowners; and, transect properties at diagonals thereby increasing the disturbance to those lands. Enbridge's views on each specific alternate route are described below.

Alternate 1

Enbridge submitted that Alternate 1 is not the best route as it is approximately 5.9 km longer than the proposed route. Further, Enbridge noted that Alternate 1 would require: eight additional hotbends; two additional pipeline crossings; one additional power line crossing; three additional road crossings; and, one additional railway crossing. Lastly, Alternate 1 would affect 23 additional tracts of land.

These additional requirements would increase the cost to construct the pipeline by approximately $8,957,035. Enbridge stated that this estimate excludes additional regulatory costs as well as costs associated with the purchase of affected lands and operating and maintenance activities. In addition, as this Alternate deviates and returns to the proposed route at locations within areas already approved for construction, there would be further costs associated with the abandonment and reclamation of installed sections of pipelines and facilities.

Alternate 2

Enbridge submitted that Alternate 2 is not the best route as it is between 1.3 km and 1.7 km longer than the proposed route. Alternate 2 would require five additional hotbends and three additional power line crossings. Enbridge stated that there would be an increase of approximately 5.8 km to 6.2 km of non-contiguous RoW over the route and that 8 additional tracts of land would be affected. Enbridge submitted that Alternate 2 would result in a capital cost increase of $1,959,855 at a minimum.

Alternate 3

Enbridge is of the view that Alternate 3 is not the best route as it is between 1.3 km and 1.8 km longer than the proposed route. Alternate 3 would require an additional seven hotbends and three power line crossings. Enbridge stated that there would be an increase of approximately 6.5 km to 6.9 km of non-contiguous RoW over the route and that 12 additional tracts of lands would be affected. Alternate 3 would result in a cost increase of at least $2,061,000, not including the costs associated with the abandonment and reclamation of installed sections of pipeline and facilities.

The Dentons

The Dentons submitted that each of their Alternate Routes is preferable to the route proposed by Enbridge in terms of its future implications for land use and development south of Regina.

Alternate 1

The Dentons submitted that Alternate 1 is their preference as the best possible route for the Clipper pipeline as it follows existing, permanent and NEB-regulated RoW and leaves a significant buffer for expansion to the south of Regina. The Dentons submitted that this route is only slightly longer than the route chosen by Enbridge, but significantly diminishes the impact of the pipeline on future land use.

Alternate 2

Alternate 2 is the third choice of the Dentons. The Dentons submitted that this Alternate was developed in consultation with the affected landowner on the northwest quarter of section 27-16-20-W2 and will allow for future development of more property to the south of Regina. Alternate 2 runs along other lands owned by Lyle and Florence Denton at the edge of their proposed development.

Alternate 3

The Dentons submitted that Alternate 3 represents the second best possible route for the Clipper pipeline as it affords some buffer for urbanized or country residential expansion. This route parallels an existing NEB-regulated pipeline RoW and a SaskPower transmission line before traversing property owned by a landowner already affected by the Clipper pipeline. Alternate 3 also follows along the south boundary of other lands owned by Lyle and Florence Denton.

Views of the Board

The Board is of the view that the proximity of proposed pipelines to urban areas is a relevant consideration when determining the best possible detailed route of a pipeline. However, in this case, the Board considers that the proposed pipeline is of sufficient distance from the City of Regina's projected short, medium and long term growth and development plans to avoid land use conflicts with the City.

The Board finds that the Dentons' development plans are speculative at this time, in view of the RM of Sherwood's Existing and Proposed Plans and Bylaws and the servicing constraints affecting the Denton Lands. The Denton lands are crossed by high-voltage power lines and natural gas pipelines. Based on the evidence before it, the Board is of the view that this infrastructure could not be easily moved. The Board is further of the view that development of the lands could proceed around the proposed pipeline and the existing easements in the event that the lands are developed in the future.

In approving the detailed route proposed by Enbridge, the Board notes Enbridge's commitment to explore whether a reduction to the width of the RoW may be possible. The Board also notes Enbridge's commitment to work with the Dentons to mitigate any potential impacts of the pipeline on their Living Tree Memorial Site.

Decision for the Dentons

Based on the evidence before it, the Board finds that the route proposed by Enbridge on the Denton Lands is the best possible route for the pipeline.

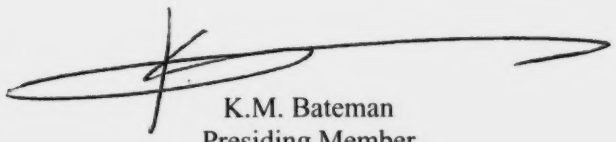
The approval of the detailed route will be subject to the condition that Enbridge file a report with the Board copied to the Dentons, at least two weeks prior to the start of construction, outlining the results of its survey of the Denton Lands and discussions with SaskPower and any resulting proposals to alter the RoW width.

Chapter 4

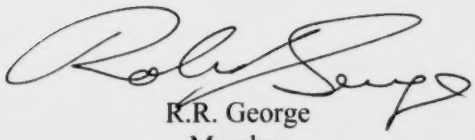
Disposition

The foregoing chapters constitute our Decisions and Reasons for Decision in the Board's MH-3-2008 detailed route hearing.

The Board values the efforts and involvement of all those who participated in this hearing. The Board recognizes that hearings such as this raise matters that are sensitive and important to people and also recognizes the challenges posed in preparing for and attending the hearing. Therefore, the Board appreciates the respect shown by participants at this proceeding, the extent of the preparations made by people leading up to and during their participation at the hearing and the quality of the submissions that were made. Evidence and comments at the oral hearing were very helpful to the Board in making its decisions.



K.M. Bateman
Presiding Member



R.R. George
Member

D.M. Hamilton
Member

Calgary, Alberta
May 2009